

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-120
SENATE BILL 321

AN ACT TO CONFORM PROVISIONS OF NORTH CAROLINA SURPLUS LINES INSURANCE LAWS TO THE FEDERAL NONADMITTED AND REINSURANCE REFORM ACT OF 2010, TO STREAMLINE APPLICATIONS FOR COMMERCIAL PURCHASERS, TO PREVENT ANY LOSS OF PREMIUM TAX REVENUE TO THE STATE, AND TO CONFORM THE DEFINITION OF RISK RETENTION GROUP TO FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1.1. Article 21 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-21-4. Nonadmitted and Reinsurance Reform Act duties.

(a) For the purposes of carrying out the provisions of the Nonadmitted and Reinsurance Reform Act of 2010, the Commissioner is authorized to utilize the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of an individual or an entity as a surplus lines producer and for renewal of such license.

(b) In order to assist in the performance of the Commissioner's duties, under the Nonadmitted and Reinsurance Reform Act of 2010, the Commissioner may contract with nongovernmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions that the Commissioner and the nongovernmental entity may deem to be appropriate, including (i) the collection of fees related to producer licensing and (ii) the collection of the premium tax under G.S. 58-21-85. The NAIC or other entity with whom the Commissioner contracts may charge a reasonable fee to the insurer, insured, or other appropriate person for the functions performed."

SECTION 1.2. The Revenue Laws Study Committee shall, in cooperation with the Commissioner of Insurance, study the potential impact that would result from the State's entrance into a nonadmitted insurance multistate agreement or other compact or interstate agreement for the purpose of carrying out the Nonadmitted and Reinsurance Reform Act of 2010 in order to prevent the State from losing revenue after July 21, 2011, the effective date of the Nonadmitted and Reinsurance Reform Act. The Committee shall determine if entering into a compact or agreement would result in retention of surplus lines tax revenue for the State and, if so, which compact or agreement would result in the most retention of surplus lines tax revenue for the State and the most cost-efficient method of administering the collection and distribution of tax revenues. The Committee shall report its findings and recommendations, including any proposed legislation, to the 2012 Regular Session of the 2011 General Assembly.

SECTION 2. G.S. 58-21-10 reads as rewritten:

"§ 58-21-10. Definitions.

As used in this Article:

- (1) "Admitted insurer" means an insurer licensed to ~~do an insurance business~~ engage in the business of insurance in this State.
- (1a) "Affiliate" means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.



- (1b) "Affiliated group" means any group of entities that are all affiliated.
- (2) "Capital", as used in the financial requirements of G.S. 58-21-20, means funds paid in for stock or other evidence of ownership.
- (2a) "Control" means an entity that has "control" over another entity if either of the following occurs:
 - a. The entity directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote twenty-five percent (25%) or more of any class of voting securities of the other entity.
 - b. The entity controls in any manner the election of a majority of the directors or trustees of the other entity.
- (3) "Eligible surplus lines insurer" means a nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance under G.S. 58-21-20.
- (4) "Export" means to place surplus lines insurance with a nonadmitted insurer.
- (5) "Nonadmitted insurer" means an insurer not licensed to do an insurance business in this State. ~~This definition—~~"Nonadmitted insurer" includes insurance exchanges authorized under the laws of various states. "Nonadmitted insurer" does not include a risk retention group, as defined in G.S. 58-22-10(10).
- (6) "Producing broker" means an agent or broker licensed under Article 33 of this Chapter who deals directly with the party seeking insurance and who may also be a surplus lines licensee.
- (7) "Surplus", as used in the financial requirements of G.S. 58-21-20, means funds over and above liabilities and capital of the company for the protection of policyholders.
- (8) "Surplus lines insurance" means any insurance in this State of risks resident, located, or to be performed in this State, permitted to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance, other than reinsurance, commercial aircraft insurance, wet marine and transportation insurance, insurance independently procured pursuant to G.S. 58-28-5, life and accident or health insurance, and annuities.
- (9) "Surplus lines licensee" means a person licensed under G.S. 58-21-65 to place insurance on risks resident, located, or to be performed in this State with nonadmitted insurers eligible to accept such insurance.
- (10) "Wet marine and transportation insurance" means:
 - a. Insurance upon vessels, crafts, hulls and of interests therein or with relation thereto;
 - b. Insurance of marine builder's risks, marine war risks and contracts of marine protection and indemnity insurance;
 - c. Insurance of freights and disbursements pertaining to a subject of insurance coming within this subsection; and
 - d. Insurance of personal property and interests therein, in the course of exportation from or importation into any country, or in the course of transportation coastwise or on inland waters including transportation by land, water, or air from point of origin to final destination, in connection with any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, transshipment, or reshipment incident thereto."

SECTION 3. Article 21 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-21-11. Home state.

(a) The provisions of this Article shall apply to those transactions in which North Carolina is the home state of the insured.

(b) Except as provided in subsection (c) of this section, the term "home state" means, with respect to an insured, either of the following:

(1) The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence.

(2) If one hundred percent (100%) of the insured risk is located out of the state referred to in subdivision (1) of this subsection, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(c) Affiliated Groups. – If two or more insureds from an affiliated group are named insureds on a single nonadmitted insurance contract, the term "home state" means the home state, as determined pursuant to subsection (b) of this section, of the member of the affiliated group that has the largest percentage of premium attributed to it under that insurance contract."

SECTION 4. G.S. 58-21-15 reads as rewritten:

"§ 58-21-15. Placement of surplus lines insurance.

~~Insurance may be procured through a surplus lines licensee from nonadmitted insurers if:~~
Surplus lines may be placed by a surplus lines licensee if all of the following apply:

(1) Each insurer is an eligible surplus lines ~~insurer;~~insurer.

(1a) Each insurer is authorized to write the kind of insurance in its domiciliary jurisdiction.

(2) The full amount or kind of insurance cannot be obtained from insurers who are admitted to do business in this State. Such full amount or kind of insurance may be procured from eligible surplus lines insurers, provided that a diligent search is made among the insurers who are admitted to transact and are actually writing the particular kind and class of insurance in this ~~State;~~andState.

(3) All other requirements of this Article are met."

SECTION 5. Article 21 of Chapter 58 of the General Statutes is amended by adding the following new sections to read:

"§ 58-21-16. Streamlined application for commercial purchasers.

(a) A surplus lines licensee seeking to procure or place nonadmitted insurance in this State for an exempt commercial purchaser shall not be required to satisfy any requirement under G.S. 58-21-15 to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if all of the following apply:

(1) The licensee procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight.

(2) The exempt commercial purchaser has subsequently requested in writing the licensee to procure or place such insurance from a nonadmitted insurer.

(b) As used in this section, the following definitions apply:

(1) "Exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets all of the following requirements:

a. The person employs or retains a qualified risk manager to negotiate insurance coverage.

- b. The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars (\$100,000) in the immediately preceding 12 months.
 - c. The person meets at least one of the following criteria:
 - 1. The person possesses a net worth in excess of twenty million dollars (\$20,000,000), as such amount is adjusted pursuant to subsection (c) of this section.
 - 2. The person generates annual revenues in excess of fifty million dollars (\$50,000,000), as such amount is adjusted pursuant to subsection (c) of this section.
 - 3. The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.
 - 4. The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars (\$30,000,000), as such amount is adjusted pursuant to subsection (c) of this section.
 - 5. The person is a municipality with a population in excess of 50,000 persons.
- (2) "Qualified risk manager" means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:
- a. Is an employee of, or third-party consultant retained by, the commercial policyholder.
 - b. Provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.
 - c. Has one of the following:
 - 1. A bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the Commissioner to demonstrate minimum competence in risk management and one of the following:
 - I. Three years of experience in risk financing, claims, administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance.
 - II. One of the following designations:
 - A. Chartered Property and Casualty Underwriter (CPCU) issued by the American Institute for CPCU/Insurance Institute of America.
 - B. Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America.
 - C. Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research.
 - D. RIMS Fellow (RF) issued by the Global Risk Management Institute.
 - E. A designation, certification, or license determined by the Commissioner to

demonstrate minimum competency in risk management.

2. Seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and has any one of the designations specified in sub-sub-sub-sub-subdivisions A. through E. of sub-sub-sub-subdivision II. of this sub-subdivision.
3. Ten years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance.
4. A graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the Commissioner to demonstrate minimum competence in risk management.

(c) Effective on the fifth January 1 occurring after the date of the enactment of this section and each fifth January 1 occurring thereafter, the dollar amounts in sub-sub-subdivisions (b)(1)c.1., 2., 3., and 4. of this section shall be adjusted to reflect the percentage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the U.S. Department of Labor.

"§ 58-21-17. Placement with alien insurers.

Nothing in this Article prohibits a surplus lines licensee from placing surplus lines insurance with, or procuring surplus lines insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC."

SECTION 6. G.S. 58-21-20(a) reads as rewritten:

"(a) No surplus lines licensee shall place any coverage with a nonadmitted insurer, unless at the time of placement, such nonadmitted insurer: A surplus lines licensee shall not place coverage with a nonadmitted insurer unless, at the time of placement, the surplus lines licensee has determined that the nonadmitted insurer satisfies the following:

- (1) ~~Has established satisfactory evidence of good repute and financial integrity;~~
~~and~~
- (2) Qualifies under one of the following subdivisions:
 - a. Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction, which equals the greater of either:
 1. This State's minimum capital and surplus requirements under ~~G.S. 58-7-75, or~~ G.S. 58-7-75.
 2. Fifteen million dollars ~~(\$15,000,000);~~ (\$15,000,000).
~~whichever is greater, except that nonadmitted insurers already qualified under this Article must have ten million dollars (\$10,000,000) by December 31, 1991, twelve million five hundred thousand dollars (\$12,500,000) by December 31, 1992, and fifteen million dollars (\$15,000,000) by December 31, 1993. The requirements of this sub-subdivision may be satisfied by an insurer possessing less than the commitment capital and surplus upon an affirmative finding of acceptability by the Commissioner. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, and the insurer's record and reputation within the industry. In no event shall the Commissioner~~

~~make an affirmative finding of acceptability when the insurer's capital and surplus is less than four million five hundred thousand dollars (\$4,500,000).~~

~~In addition, an alien insurer qualifies under this subdivision if it complies with the capital and surplus requirements of this subdivision and maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System, in an amount not less than five million four hundred thousand dollars (\$5,400,000) for the protection of all of its policyholders in the United States, and the trust fund consists of cash, securities, letters of credit, or of investment of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance in this State. The trust fund, which shall be included in any calculation of capital and surplus or its equivalent, shall have an expiration date which at no time shall be less than five years; or~~The requirements of this sub-subdivision may be satisfied by an insurer's possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the Commissioner. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. In no event shall the Commissioner make an affirmative finding of acceptability when the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars (\$4,500,000).

- b. In the case of any Lloyd's plans or other similar group of insurers, which consists of unincorporated individual insurers, or a combination of both unincorporated and incorporated insurers, maintains a trust fund in an amount of not less than one hundred million dollars (\$100,000,000) as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group, and the trust shall likewise comply with the terms and conditions established in subdivision (2)a. of this section for alien ~~insurers; and~~insurers.
- c. In the case of an "insurance exchange" created by the laws of individual states, maintain capital and surplus, or the substantial equivalent thereof, of not less than seventy-five million dollars (\$75,000,000) in the aggregate. For insurance exchanges which maintain funds in an amount of not less than fifteen million dollars (\$15,000,000) for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent thereof, of not less than five million dollars (\$5,000,000). If the insurance exchange does not maintain funds in an amount of not less than fifteen million dollars (\$15,000,000) for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of subdivision (2)a. of this section.
- d. In the case of a group of incorporated insurers under common administration, which has continuously transacted an insurance business outside the United States for at least three years

immediately before this time, and which submits to this State's authority to examine its books and records and bears the expense of the examination, and maintains an aggregate policyholders' surplus of not less than ten billion dollars (\$10,000,000,000), and maintains in trust a surplus of not less than one hundred million dollars (\$100,000,000) for the benefit of United States surplus lines policyholders of any member of the group, and each insurer maintains capital and surplus of not less than twenty-five million dollars (\$25,000,000) per company.

- (3) Has caused to be provided to the Commissioner a copy of its current annual statement certified by such insurer; such statement to be provided no more than two months, and for alien insurers six months, after the close of the period reported upon and that is either:
 - a. Filed with and approved by the regulatory authority in the domicile of the nonadmitted insurer; or
 - b. Certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile; or
 - c. In the case of an insurance exchange, the statement may be an aggregate combined statement of all underwriting syndicates operating during the period reported."

SECTION 7. G.S. 58-21-35(a) reads as rewritten:

"§ 58-21-35. Duty to file and retain reports.

(a) Within 30 days after the placing of any surplus lines insurance, the surplus lines licensee shall file with the Commissioner a report in a format prescribed by the Commissioner regarding the insurance and including the following information:

- (1) The name of the insured.
- (2) The identity of the insurer or insurers.
- (3) A description of the subject and location of the risk.
- (4) The amount of premium charged for the insurance.
- (5) The amount of premium tax for the insurance.
- (6) The policy period.
- (7) The policy number.
- (7a) An acknowledged statement that the surplus lines licensee has complied with G.S. 58-21-15, G.S. 58-21-15 or G.S. 58-21-16, whichever is applicable.
- (8) The name, address, telephone number, facsimile telephone number, and electronic mail address of the licensee, as applicable.
- (9) Any other relevant information the Commissioner may reasonably require.

(b) The licensee shall complete and retain a copy of the report in paper or electronic form as required by the Commissioner. The report required by this section and the quarterly report required by G.S. 58-21-80 shall be completed on a standardized form or forms prescribed by the Commissioner and are not public records under G.S. 132-1 or G.S. 58-2-100."

SECTION 8. G.S. 58-21-65 reads as rewritten:

"§ 58-21-65. Licensing of surplus lines licensee.

(a) ~~No~~ For insureds whose home state is this State, no agent or broker licensed by the Commissioner shall procure any contract of surplus lines insurance with any nonadmitted insurer, unless he possesses a current surplus lines insurance license issued by the Commissioner.

(b) The Commissioner shall issue a surplus lines license to any qualified holder of a current property broker's or agent's license, but only when the broker or agent has:

- (1) Remitted the fifty dollars (\$50.00) annual fee to the Commissioner;

- (2) Submitted a completed license application on a form supplied by the Commissioner, and the application has been approved by the Commissioner;
- (3) Passed a qualifying examination approved by the Commissioner; except that all holders of a license prior to July 11, 1985 shall be deemed to have passed such an examination; and
- (4) Repealed by Session Laws 2004-199, s. 20(c), effective August 17, 2004.

(c) Corporations shall be eligible to be resident surplus lines licensees, upon the following conditions:

- (1) The corporate licensee shall list individuals within the corporation who have satisfied all requirements of this Article to become surplus lines licensees; and
- (2) Only those individuals listed on the corporate license and who are surplus lines licensees shall transact surplus lines business.

(d) Each surplus lines license shall be issued on September 1 of each year and expire August 31 of the following year unless renewed. Application for renewal shall be made 30 days before the expiration date. The license shall be renewed upon payment of the annual license fee and compliance with the other applicable provisions of this section. Any person who places surplus lines insurance without a valid surplus lines license in effect shall pay a penalty of one thousand dollars (\$1,000) and be subject to such other penalties as provided by law.

The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(e) Any person who does not renew a surplus lines license and applies for another surplus lines license more than two years after the expiration date of the previous license shall be required to satisfy every condition in this section, including the written exam, before the Commissioner issues another surplus lines license to that person.

~~(f) A person licensed as a surplus lines licensee under the laws of a state bordering this State may be licensed as a surplus lines licensee under this Article, if: (i) the laws of the bordering state are substantially similar to the provisions of this Article and (ii) the bordering state has a law or regulation substantially similar to this subsection that permits surplus lines licensees licensed under this Article to be licensed by the bordering state and (iii) the person complies with all requirements of this Article and submits himself or herself to the Commissioner's jurisdiction. Nonresident surplus lines licensees shall be licensed in accordance with Article 33 of this Chapter."~~

SECTION 9. G.S. 58-21-85 reads as rewritten:

"§ 58-21-85. Surplus lines tax.

(a) Gross premiums charged, less any return premiums, for surplus lines insurance on insureds for whom North Carolina is the home state are subject to a premium receipts tax of five percent (5%), which shall be collected by the surplus lines licensee as specified by the Commissioner, in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any portion of the premium unearned at termination of insurance having been credited by the State to the licensee shall be returned to the policyholder directly by the surplus lines licensee or through the producing broker, if any. The surplus lines licensee is prohibited from absorbing such tax and from rebating for any reason, any part of such tax. To the extent that other states in which portions of the properties, risks, or exposures reside have failed to enter into a compact or reciprocal allocation procedure with this State, the premium tax collected shall be retained by this State.

(b) At the same time that he files his quarterly report as set forth in G.S. 58-21-80, each surplus lines licensee shall pay the premium receipts tax due for the period covered by the report.

(c) This section does not apply to risks of State government agencies nor to risks of local government risk pools created and operating under Article 23 of this Chapter.

(d) The surplus lines licensee placing the insurance and claiming the exemption in subsection (c) of this section shall affirmatively show in writing to the Commissioner that the risk qualifies for the exemption."

SECTION 10. G.S. 58-22-10(10) reads as rewritten:

"(10) "Risk retention group" means any corporation or other limited liability association:

- a. Whose primary activity consists of assuming and spreading all or any portion of the liability exposure of its group members;
- b. That is organized for the primary purpose of conducting the activity described under sub-subdivision a. of this subdivision;
- c. That
 - (i) Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or
 - (ii) Before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, had certified to the insurance regulator of at least one state that it satisfied the capitalization requirements of such state; except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as such terms were defined in the Product Liability Risk Retention Act of 1981 before the effective date of the Risk Retention Act of 1986;
- d. That does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such person;
- e. That
 - ~~(i) Has as its members only persons who have an ownership interest in the group and that has as its owners only persons who are members who are provided insurance by the risk retention group; or~~
 - ~~(ii) Has as its sole member and sole owner an organization that is owned by persons who are provided insurance by the risk retention group;~~
 - (i) Has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or
 - (ii) Has as its sole owner an organization that meets all of the following:
 - I. Its members are only persons who comprise the membership of the risk retention group; and
 - II. Its owners are only persons who comprise the membership of the risk retention group and who are provided insurance by such group;
- f. Whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations;

- g. Whose activities do not include the provision of insurance other than:
- (i) Liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members; and
 - (ii) Reinsurance with respect to the similar or related liability exposure of any other risk retention group, or any ~~members~~ member of such other group, that is engaged in businesses or activities so that such group or member meets the requirement described in sub-subdivision f. of this subdivision from membership in the risk retention group that provides such reinsurance; and
- h. The name of which includes the phrase "Risk Retention Group"."

SECTION 11. This act becomes effective July 21, 2011.

In the General Assembly read three times and ratified this the 8th day of June, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 9:20 a.m. this 13th day of June, 2011